AGREEMENT FOR TOWER SPACE AND APPURTENANCES

This Agreement For Tower Space and Appurtenances ("Agreement") made this day of _______, 2006 between the City of Lincoln, Nebraska, a municipal corporation, hereinafter "City" and New Cingular Wireless PCS, LLC, a Delaware limited liability company, hereinafter "Cingular".

- 1. <u>Description of Premises</u>. CITY grants to Cingular a license ("License") to occupy and use a certain parcel of real property and tower ("Tower") situated thereon, located at 5500 W. Superior Street, Lincoln, NE, County of Lancaster (the Tower and the real property are, collectively, the "Property", and the specific portions of the Property occupied by Cingular exclusively are the "Premises"), all as shown on the attached Exhibit A which is incorporated herein by this reference.
- 2. <u>Term of Agreement</u>. The primary term ("**Primary Term**") of this License will be for ten (10) years, and will commence upon the full execution of this Agreement (the "**Commencement Date**").

This Agreement may thereafter be renewed for three (3) additional terms (each a "Renewal Term") of five years each on the same terms and conditions herein. The Agreement shall automatically renew for the first Renewal Term, unless Cingular provides the City with a notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term. The second and third Renewal Terms shall require the mutual consent of Cingular and the City. The City represents that at the time it enters into this Agreement it has no present intention not to renew this Agreement for the second and third Renewal Terms. The Primary Term and Renewal Term may collectively be referred to as the "License Term".

The parties agree that this License is irrevocable until this Agreement expires or terminates as provided herein.

- 3. <u>Use of Premises</u>. The Premises will be used for the purpose of the transmission and reception of communications signals, and the installation, construction, maintenance, repair, operation, alteration, inspection, expansion, adding to and removing Cingular's communications equipment, including, but not limited to, the following:
- a. Any and all antennas, dishes and/or grids as Cingular may deem appropriate, on the Tower with the centerline being at approximately 110 feet. Cingular shall allow the City to place the next provider as high as possible on the Tower, possible at 104 feet.
 - b. Transmission lines and mounting and grounding hardware.
- c. One concrete pad and one communications compound ("Communications Compound") containing, without limitation, telecommunications equipment consisting of base

station cabinets, wireless communication equipment and related equipment, cables, switches, power supplies, batteries, and accessories.

- d. An emergency generator, if required by Cingular, (or other back up power source) to be located, at Cingular's option, for Cingular's use, within the Communications Compound, adjacent to the Communications Compound or within a separate area adjacent to the Communications Compound. The fuel tank for the generator (gasoline, diesel, butane, propane, LPG or other) may be located either inside or outside the Communications Compound, in accordance with applicable building codes.
- e. Cingular shall have 24-hour 7 day a week access to the Premises. CITY shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times. CITY shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Cingular's use of such roadways.
- (f) For the purposes of this License, all of Cingular's equipment, antennas, dishes, lines, switches, power supplies, batteries, cables, Communications Compound, generator, generator shelter, accessories, and necessary appurtenances will be referred to herein collectively as the "Communications Facility." The concrete pad and Communications Facility shall be installed by Cingular.
- (g) Cingular shall, at its sole cost and expense, design, engineer, fabricate, construct, erect and install the Tower in accordance with the specifications approved by CITY. Cingular shall submit the building plans to CITY who shall have fifteen (15) calendar days to accept or reject such plans and deliver such notice to Cingular in writing. Should the CITY fail to respond in writing to Cingular within such fifteen (15) day period, such plans shall be deemed approved. As soon as reasonably possible after CITY approves the building plans, Cingular shall construct and install, at Cingular's cost, the Tower and its Communications Facility at the location depicted on **Exhibit A**, in accordance with the approved plans and specifications shown on **Exhibit B**. The Communications Facility may be installed by Cingular or by any of Cingular's agents or contractors. Cingular may make alterations to the Communications Facility from time to time as Cingular determines to be necessary or desirable, subject to the approval process described above, which approval will not be unreasonably withheld, conditioned or delayed.
- (h) Cingular may, at its own cost and expense, install, maintain and operate on the Tower or on the Premises, only the equipment necessary for the operation of the Communications Facility in accordance with the plans approved by CITY, as such plans may be amended from time to time for technological or capacity changes. Any damage to the Premises caused by the erection, operation and maintenance of the Communications Facility shall be at Cingular's sole expense. Cingular may run all necessary transmission lines between Cingular's equipment and Cingular's antennas, dishes and grids.

All work to be performed on the Premises and any easement area shall be performed in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. Cingular shall obtain all permits necessary for such construction. Any contractor performing work on the Premises shall furnish a payment bond, with corporate surety licensed to do business in the State of Nebraska, in the full amount of the cost of such improvements, showing CITY as the beneficiary thereon. All such contractors shall carry statutory worker's compensation insurance and liability insurance with limits of not less than One Million Dollars (\$1,000,000).

- 4. <u>Other Licenses and Permits</u>. Cingular shall secure from the proper governmental authorities all licenses and permits required by law for the erection, maintenance and operation of the structures and appurtenances thereto including the Communications Compound, before construction of the Communications Facility.
- 5. Ownership of Tower. a. Within thirty (30) days of the completion of the installation of the Tower, Cingular shall execute a bill of sale to CITY, in the form attached hereto as **Exhibit E** (the "Bill of Sale") conveying ownership of the Tower to the CITY free and clear of all liens, encumbrances or defects whatsoever. Cingular further agrees to execute such additional instruments as the CITY may reasonably require to evidence and to effect good merchantable title in and to the Tower in the CITY. All antennas and transmission lines belonging to Cingular that are located on the Tower at the time of transfer of ownership of same, and any such equipment placed on the Tower subsequent to that time by Cingular, excluding any equipment owned by the CITY or any Third Party Lessees (defined below), shall be and remain the sole property of Cingular.
- b. The ownership of the real property and Tower is in the CITY. CITY shall bear all risk of loss and responsibility to maintain the real property and Tower. If the Tower is destroyed or extensively damaged within the Term of this Agreement, the Tower may be repaired or replaced by CITY at its expense. If the City does not choose to repair or replace the Tower in a timely manner, Cingular may terminate this Agreement. If the License Fee Abatement, as defined below, is still in progress during the License Term, the CITY shall bear no obligation or responsibility for any losses to the Communication Facility if the Tower is destroyed by an act of nature or by acts beyond the CITY's control. If the Tower is destroyed or extensively damaged at any time during the License Term of this Agreement, and the CITY elects to repair or replace the Tower, the CITY grants Cingular the right to erect a temporary communications facility or a cell on wheels on the Property at a mutually agreed upon location until such time as the Tower has been fully repaired or replaced. The License Fee shall then continue pursuant to Paragraph 6 below.
- c. The CITY shall have the right during the License Term of this Agreement to use areas of the portions of the Tower not leased by Cingular for its own purposes and/or to lease any portion thereof to third parties ("Third Party Lessees"). The CITY agrees that all Third Party Lessees shall be responsible for (i) the costs incurred in connection with any modifications to the Tower after completion of the Tower to house the antennas for such Third Party Lessees, and (ii) any engineering tests and frequency analysis required in connection with such

modifications, (iii) notwithstanding Paragraph 10 of this Agreement, the CITY shall be responsible for maintaining the structural integrity of the Tower in the event Third Party Lessees are permitted to lease space on the Tower.

6. Fees. a. Cingular shall pay to CITY a license fee to occupy and use the Premises, ("License Fee"). Beginning on the Commencement Date and continuing thereafter for the duration of the Primary Term, if applicable, and any Renewal Term, the annual License Fee shall be \$23,500 payable in twelve (12) equal monthly installments of \$1958.33 in advance on or before the first day of each and every calendar month. The annual License Fee in each succeeding year of the Primary Term, if applicable, and any Renewal Term shall be 103% of the Rent in effect during the immediately preceding lease year, paid monthly (the "Percentage Increase"), further depicted on Exhibit D, attached hereto and known as the "License Fee Schedule". The License Fee for any period during the term of this License that is less than one (1) year will be prorated. All payments shall be made payable to and mailed to the following address:

City of Lincoln City Treasurer 575 S. 10th Lincoln, NE, 68508

- b. The CITY shall reimburse CINGULAR for Tower Costs by way License Fee abatement ("License Fee Abatement") further depicted on **Exhibit D**. Those Tower Costs include all costs associated with the pre-construction, construction and erection of the Tower including, but not limited to, design costs, materials and labor costs and those pertinent transportation and freight costs associated with the construction of said Tower. Upon the completion of the Fee Abatement Schedule depicted on **Exhibit D**, CINGULAR shall make License Fee payments to the CITY as set forth on **Exhibit D**.
- Access to CITY Property. It is acknowledged that the Tower and 7. appurtenances thereto are constructed on CITY property which is a vital part of CITY's operations. Cingular shall operate their appurtenances to the Tower thereto on the licensed Premises in such a manner so that the operation does not interfere with CITY's current operations on its Property nor will it interfere with access to the Property by CITY personnel, agents or contractors. Cingular agrees to comply with any reasonable rules, regulations, and procedures that may be adopted by CITY from time to time to provide reasonable security measures to protect the Premises and CITY. If, subsequent to this Agreement, the CITY adopts rules, regulations and/or procedures, which, for Cingular to be in compliance of same, require modifications to its Communications Facilities, such modifications will be mutually agreed upon by both parties at a reasonable cost to Cingular. In the event both parties cannot agree to the required modifications, Cingular shall have the right to terminate this Agreement with no future liability, except as otherwise specified herein. CITY retains the right to use the Property at any time in connection with the need of CITY to provide service to its customers. CITY will endeavor to do so in such a manner so as to not interfere with Cingular's use of the Premises. CITY retains the right to use the Property in any ways that do not interfere with Cingular's uses.

- 8. Taxes. Since the real property is owned and used by a governmental entity (CITY), it is potentially tax exempt. Cingular shall be responsible for and pay all taxes before any penalties or interest that shall accrue thereon, as an additional license fee, if taxes are subsequently levied against the Communications Facilities. Cingular will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its possession or use of the Communications Facility or Premises. Cingular shall have the right, at its sole option, and at its sole cost and expense, to appeal, challenge or seek modification of any personal property tax assessment or billing for which Lessee is wholly or partly responsible for payment under this Agreement.
- 9. <u>Payment of Utilities</u>. Cingular shall have the right to draw telco, electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Premises (including a standby power generator for Cingular's exclusive use). Cingular shall fully and promptly pay for all utility service of every kind furnished to the licensed Premises throughout the License Term. CITY shall not be liable for any damage to equipment or loss of revenue to Cingular resulting from the interruption of utility services unless due to the negligent or intentional acts of CITY. All fees due under this Agreement shall continue notwithstanding any interruption of power or other required utility facilities, except for the willful act or negligence of CITY.
- 10. <u>Maintenance of Licensed Premises</u>. CITY will maintain the Tower in a proper operating and safe condition. All costs associated with the maintenance and repair of the Tower, including painting, will be paid by CITY, unless the damage to the Tower is caused by Cingular, in which case Cingular shall repair such damage or, at Cingular's option, reimburse CITY for the costs and expenses incurred by CITY to repair the damage.

Cingular shall, throughout the term of this license, at its own cost and expense, keep and maintain the Communications Facilities and all appurtenances thereto including all constructed improvements in good, sanitary, lawful and neat order, condition and repair, excluding any of CITY's property and equipment from the licensed Premises, and Non-Antenna Appurtenances. Any landscaping of the Premises, required as a result of the installation of Cingular's Communications Facilities, required by the City of Lincoln or any other appropriate governmental authority shall be done at the sole cost and expense of Cingular, including all necessary maintenance. Any trees, shrubs or bushes originally installed by Cingular will only have to be replaced by Cingular no more that one (1) time during the License Term, unless the need for such replacement is due to Cingular's neglect. Neither Cingular nor any other party shall be allowed to display any signage or advertisement on the Tower, on any building within the Premises or anywhere on the Premises, except as required by law. Cingular shall take all reasonable necessary measures and precautions to prevent unauthorized persons access to the Premises, buildings located on the Premises and to the Tower.

11. <u>Liability</u>. CITY shall not be liable for damage to Cingular's improvements or for any loss or damage to any vehicles parked upon the licensed Premises, except for the negligent or willful act of CITY. Cingular shall at all times during the term of this

license keep in full force and effect, a commercial general liability policy with Three Million Dollars (\$3,000,000.00) combined single limit coverage for bodily injury and property damage, naming CITY as an additional insured on such policy. The CITY may adjust the required amounts of such insurance during the Term of the Agreement in conjunction with changes in the amounts recoverable under state law but in no event in an amount greater than Five Million Dollars (\$5,000,000.00) without the agreement of Cingular. Cingular shall furnish CITY with a certificate of such insurance policy which shall provide such insurance policy shall not be canceled without first having given CITY thirty (30) days written notice of such cancellation. Any contractor or subcontractor performing work on the Premises for or on behalf of Cingular shall carry statutory workers' compensation insurance, comprehensive general liability and automobile insurance with limits of not less than One Million Dollars (\$1,000,000.00).

- Modular Building. Cingular may erect, at its own cost and expense, one modular building/prefabricated shelter on the Premises, which shall be maintained, repaired and secured by Cingular. The modular building/prefabricated shelter must be constructed according to the applicable laws and regulations of the State of Nebraska. The plans for and location of the modular equipment building/prefabricated shelter on the Premises must be approved in advance by CITY before the same can be placed on the Premises, such approval to be obtained in the manner set forth in Paragraph 3 above. At the time this Agreement is terminated, Cingular shall have ninety (90) days thereafter to remove the modular building/prefabricated shelter from the Premises or the same, together with all equipment therein, shall become the property of CITY.
- 13. <u>Indemnification</u>. To the fullest extent permitted by law, Cingular shall indemnify and hold harmless the CITY, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the Cingular's use and occupation of the Premises, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by Cingular or anyone directly or indirectly employed by Cingular, or anyone for whose acts any of them may be liable. This section shall not require Cingular to indemnify or hold harmless the CITY for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the CITY. The CITY shall indemnify and hold Cingular harmless, to the extent allowed by Nebraska Law, from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the CITY. Nothing in this paragraph shall require either party to indemnify the other party against such other party's own willful or negligent misconduct.
- 14. Assignment, Renting or Leasing Space. Cingular shall have the right to assign, sell or transfer its rights and interest under this License to Cingular's principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all or substantially all of the Cingular's assets in the market defined by the Federal Communications Commission ("FCC") in which the Property is located by reason of a merger, acquisition, or other business reorganization (the "Control Group") without the consent of CITY. Upon notification to Landlord of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this License. Cingular may sublicense or assign its rights under

this License to any other entity with CITY's consent, which will not be unreasonably withheld, delayed or conditioned. Notwithstanding anything to the contrary contained in this Agreement, Cingular may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Cingular (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

- 15. <u>Events of Default</u>. Default shall occur if any one or more of the following events shall happen:
- a. Cingular shall default in the punctual payment of the License Fee and such default shall continue for thirty (30) days after receipt of written notice from CITY; or
- b. If either party shall neglect or fail to perform or observe any of the material provisions of this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from the other party, the other party may, at its option, 1) cure the failure at the defaulting party's expense, or 2) terminate this License. If any such default cannot reasonably be cured within thirty (30) days, the defaulting party will not be deemed to be in default under this License if it commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion.
- c. In the event this Agreement is terminated due to a material breach by Cingular, Cingular shall not be entitled to any refund or reimbursement of costs whatsoever.
- 16. <u>Environmental Laws</u>. Cingular warrants and agrees that it will conduct its activities on the Property in compliance with all applicable environmental laws. CITY represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable environmental laws and that the Property is free of hazardous substance as of the date of this Agreement.

CITY shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable law, of all spills or other releases of hazardous substance, that have occurred or which may occur on the Property caused or attributable to the actions of the CITY. To the extent permitted by Nebraska law, CITY agrees to defend, indemnify and hold Cingular harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorneys fees that Cingular may suffer due to the existence or discovery of any hazardous substance on the Property or the migration of any hazardous substance to other properties or release into the environment arising not otherwise directly attributable to Cingular's activities on the Premises; and/or arising from any breach of any representation, warranty or agreement contained in this paragraph.

Cingular agrees to defend, indemnify and hold CITY harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorneys fees that CITY may suffer due to the existence or discovery of any hazardous substance on the property or the migration of any hazardous substance to other properties or release into the environment directly attributable to Cingular's activities on the property.

The indemnification in this paragraph specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

- 17. <u>Nebraska Law</u>. This license shall be construed and enforced in accordance with the laws of the State of Nebraska and any legal action brought in respect thereto shall be brought either in the state courts of the State of Nebraska located in Lincoln, Nebraska, or if applicable, in the United States District Court located in Lincoln, Nebraska.
- 18. <u>Binding Effect</u>. This Agreement shall inure to the benefit and be binding upon Cingular, its successors or assigns.
- 19. <u>Interference</u>. Cingular shall at all times pertinent hereto be responsible for the proper operation of its equipment located on the Premises and shall make certain that the same complies with all pertinent laws, rules and regulations of any applicable governmental authority. In the event that Cingular's equipment causes interference with any of CITY's equipment or to any communications facilities of a third party including the public that existed on the Premises prior to the date of this Agreement, Cingular, upon notice received of the interference, shall take all steps necessary to correct and eliminate the interference as soon as possible and shall take all necessary precautions and corrective action needed to prevent the reoccurrence of the interference.

Notwithstanding the foregoing, the parties intend to be bound by the principles, rules and regulations governing interference as promulgated by the FCC. CITY will not use, and will not allow its tenants to use, the Tower or Property in any manner which will limit, impair or restrict the use or operations of the Communications Facility or allow any use which could cause any destructive or conflicting interference with the Communications Facility. If any interference shall result from the operation of any transmitters, equipment, antennae, dishes or other equipment or devices to the Communications Facility, then CITY shall immediately cause such operations to cease until such interference is eliminated, provided that to do so would not jeopardize, compromise, limit, impair, or otherwise interfere with CITY's use of its Property. If CITY is unable to cure such interference within thirty (30) days of Cingular's demand, in addition to all rights at law and/or in equity, Cingular may terminate this Agreement without penalty.

20. <u>Additional Licenses</u>. Cingular acknowledges the right and authority of CITY to grant and lease or license additional licenses for telecommunications equipment and

appurtenances thereto of other users on CITY's Tower so long as such grant and lease or license does not interfere with Cingular's use of the Premises.

- 21. <u>Entire License Agreement</u>. This License contains the entire understanding of the parties hereto with respect to the conditions of this License and supersedes all prior agreements and understandings between the parties with respect to such subject matter. The representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Agreement or unless mutually agreed to in writing between the parties hereto after the date hereto, and neither party has relied on any verbal representation, agreements, or undertakings not expressly set forth herein.
- 22. <u>Notices</u>. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier, to the following addresses:

CITY:

City of Lincoln

City Treasurer 575 S. 10th

Lincoln, NE, 68508

With a copy to:

Steven Huggenberger

Assistant City Attorney 575 S. 10Th / Room 4201 Lincoln, Nebraska 68508

Cingular:

c/o Cingular Wireless LLC

Attn: Network Real Estate Administration

Re: Cingular Wireless Cell Site #:OMAHANE1117-A; Cell Site Name: Huskerville; Fixed Asset No.: 10084479

6100 Atlantic Boulevard Norcross, Georgia 30071

With a copy to:

Cingular Wireless LLC

Attn.: Legal Department

Re: Cingular Wireless Cell Site #: OMAHANE1117-A; Cell Site Name: Huskerville; Fixed Asset No.: 10084479

15 E Midland Ave. Paramus, NJ 07652

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

23. <u>Contingencies</u>. This Agreement and Cingular's obligations hereunder are expressly contingent upon the following:

- a. Cingular's satisfaction with the status of title to the Premises and, at Cingular's option and its expense, Cingular's receipt of a licensehold title insurance policy insuring its license interest in the Premises, in form and substance satisfactory to Cingular. CITY shall execute the standard form of title company affidavit in order to enable Cingular to obtain title insurance on the Premises free and clear of all exceptions other than those which have been disclosed in writing to Cingular and which do not interfere with Cingular's use of the Premises; and
- b. Cingular's satisfaction, within the first year of the Agreement, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing and operating the Communication's Facility; and Cingular's receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals and consents from all applicable governmental authorities necessary or appropriate for Cingular to use and operate the Communications Facility on the Premise.

Cingular is hereby given the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the surface and location of the Premises are suitable for Cingular's use intended by this License.

- 24. <u>Termination</u>. In addition to other rights to terminate contained herein, Cingular may terminate this Agreement at any time by notice to CITY without further liability if:
- a. Cingular does not obtain all permits or other approvals (collectively, "Approval") required from any governmental authority or any easements required from any third party to operate the Communications Facility, or if any such Approval is canceled, expires or is withdrawn or terminated; or
- b. CITY fails to have proper ownership of the Premises or authority to enter into this Agreement; or
- c. Cingular is no longer able to operate the Communications Facility due to an action by the FCC, such as a takeback in channels or change in frequencies.

Upon termination, all prepaid License Fees will be retained by CITY unless such termination is due to CITY's failure of proper ownership or authority, or such termination is a result of CITY's default. Additionally, upon termination or non-renewal Cingular must remove its antenna arrays and platforms that it owns from the Tower within ninety (90) days after the expiration of this Agreement. Failure to so remove the antenna arrays and platforms will, at the City's option, 1) result in the same being owned by CITY; or 2) result in the same being removed by the City at Cingular's cost.

25. Waiver of CITY's Lien.

- a. CITY waives any lien rights it may have concerning the Communications Facility which is deemed Cingular's personal property and not fixtures, and Cingular has the right to remove the same at any time without CITY's consent.
- b. CITY acknowledges that Cingular has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Communications Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, CITY (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

26. Warranty of Title and Quiet Enjoyment.

- a. CITY warrants that: (i) CITY owns the real property in fee simple and owns the Tower and has rights of access thereto, no additional ground lease, easement or consent is required from any third party for use of, or access to, the Property; (ii) the Property is free and clear of all liens, encumbrances and restrictions that would prohibit or interfere with Cingular's permitted use; (iii) CITY has full right to make and perform this Agreement; and (iv) CITY covenants and agrees with Cingular that upon Cingular paying the Rent and observing and performing all the terms, covenants and conditions on Cingular's part to be observed and performed, Cingular may peacefully and quietly enjoy the Premises. CITY agrees to indemnify and hold harmless Cingular from any and all claims on Cingular's leasehold interest.
- b. CITY further warrants that the Tower and real property are in compliance with all current State Historical Preservation Office ("SHPO") requirements. CITY agrees to indemnify and hold harmless Cingular from any and all claims and/or notices of non-compliance brought against CITY for any breach by CITY of this warranty, and CITY agrees to allow Cingular to continue to quietly enjoy the use of the Premises while CITY remedies any such non-compliance, or at Cingular's option, it may terminate this Agreement.
- 27. Tower Marking and Lighting Requirements. CITY acknowledges that when the Tower is part of a facility that currently provides City services, for example a water reservoir, it, and not Cingular, shall be responsible for compliance with all Tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. CITY shall indemnify and hold Cingular harmless from any fines or other liabilities caused by CITY's failure to comply with such requirements. Should Cingular be cited by either the FCC or FAA because the Tower is not in compliance and, should CITY fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Cingular may either terminate this Agreement immediately on notice to CITY or proceed to cure the conditions of noncompliance at CITY's expense, which amounts may be deducted from the License Fees.

Miscellaneous. (a) If any provision of this Agreement is invalid or 28. unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law; (b) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. (c) CITY acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit C will be recorded by Cingular in the official records of the County where the Property is located. CITY agrees to sign all necessary and appropriate documents to facilitate the filing of the Memorandum of Agreement. In the event the Property is encumbered by a mortgage or deed of trust, CITY agrees to obtain and furnish to Cingular a non-disturbance and attornment instrument for each such mortgage or deed of trust; (d) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent; (e) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this license agreement the day and year first above written.

CITY OF LINCOLN, NEBRASKA, a municipal corporation

By:	
Mayor Coleen Seng	
New Cingular Wireless, PCS, LLC	C, a Delaware limited liability company
By: Mark Hohn?	· · · · · · · · · · · · · · · · · · ·
NT	
Name: Mark Holm	L (A) TD
Title: Peol Estate and Construction Ma	morar MINIU

Date: ______9-27-06

ACKNOWLEDGMENTS

STATE OF NEBRASKA)		
COUNTY OF LANCASTER)ss:)		
I, the undersigned, a notary certify that Coleen J. Seng, as Mayo whose name is subscribed to the for and acknowledged that, pursuant to voluntary act for the uses and purpo	or for the City of Linco oregoing Agreement, her authority, she sig	oln, known to me to be tappeared before me thi	the same person s day in person
Given under my hand and se	eal this day of		006.
			····
	Му со	Notary Public ommission expires	
I, the undersigned, a notary certify that Mark Holm of New Company, known to me to be the Agreement, appeared before me thauthority, she signed the said Agree corporation, for the uses and purpose	public in and for the cingular Wireless, PC same person whose his day in person and ement as her free and es therein stated.	S, LLC, a Delaware liname is subscribed to acknowledged that, p voluntary act on behali	imited liability the foregoing ursuant to her f of the named
Given under my hand and sea	al this <u>37 in</u> day of	Soptember, 20	006.
SERENA WEBER Notary Public Minnesota My Commission Explies January 31	My co	Notary Public mmission expires) = 3	

EXHIBIT A

PROPERTY: To be defined and replaced upon survey

West 300 feet of the south 500 feet of the East half of the Southeast Quarter of Section 1, Township 10 North, Range 5 East of the Sixth Principal Meridian, Lancaster County, Nebraska, to be more fully described upon survey

PREMISES:

To be described and replaced upon survey

ACCESS AND UTILITY EASEMENTS:

To be described and replaced upon survey

SITE ADDRESS: 5500 W. Superior Street, Lincoln, NE

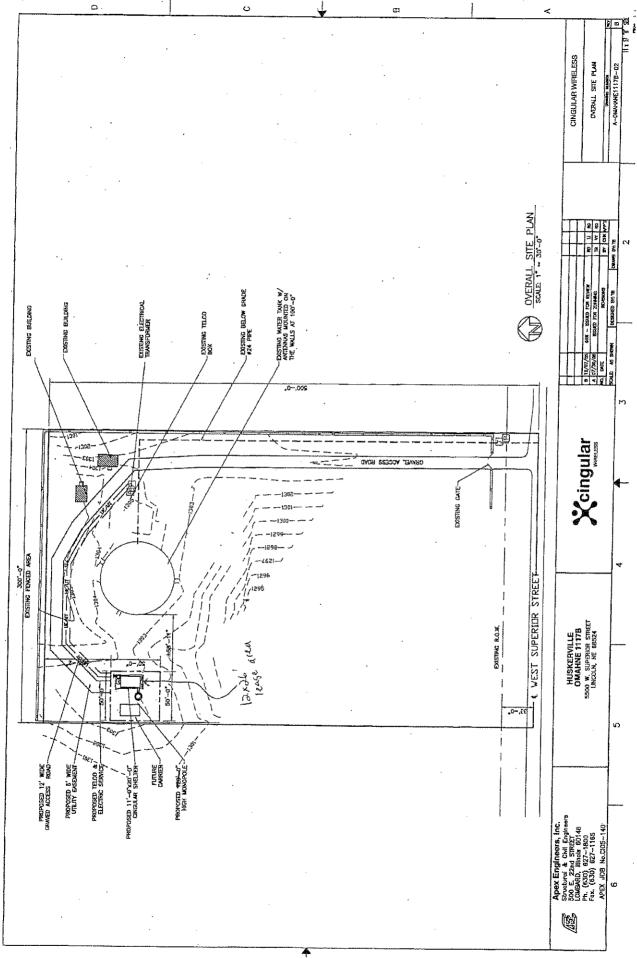
EXHIBIT B

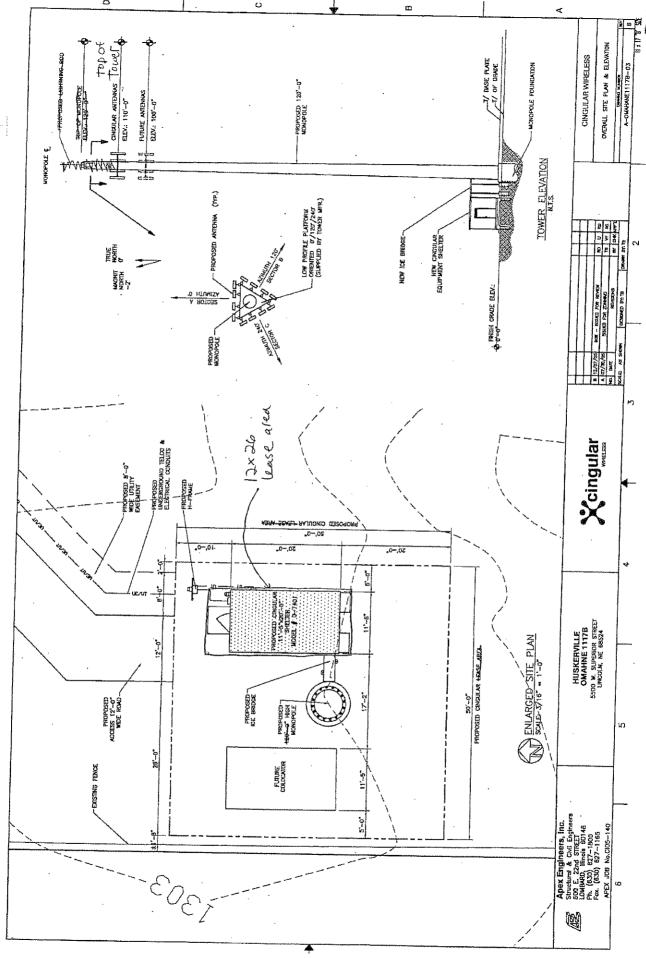
SITE: <u>Huskerville</u>	Site #: <u>OMAHNE 1117-B</u>						
FCC REGISTRATION #TBD (after construction)						
TENANT NAME: New Cingular V TEL #: 800-638-2822 CONTACT: RNOC-Central							
FCC Call Letters: KNLF 289	ANTENNA INFORMATION Type of Modulation or other						
Type of antenna: <u>Panel</u> M.	ake: EMS						
Model: <u>RR90-17-VDLP2/-R</u>							
# of antennas 12	Weight: 1.5 lbs. Each	Height: 56" Each					
Model: Nokia TTA							
# of antennas 6	Weight: 9 lbs. Each	Height: <u>6.5</u> "					
Usage: Transmit only	Receive only	Transmit & Receive XX					
Effective Radiated Power; -53 dBn	<u>n</u>						
Operating Frequency: TX: 1930-1	990MHz						
RX: <u>1850</u>	-1910 MHz						
Mounting Height & Mounting Orie	ntation: <u>120' @ 0-120-240 degree</u>	28					
Transmission line Mfg. & Type No	CommScope						
Outside Diameter: 1 5/8"		,					
TENANT'S Equipment:							
Building or Cabinet: (Underline One	e)						
Size: 11/5' x 20'							
Type: Fiberbond							
Location: As depicted on attached d	rawing						
Transmitted Rated Power of BTS: _	-43 dBm						
Amount of Land required for building	ng or cabinet: 20' x 30'						
Is Emergency Power provided by La	ANDLORD:YES X	X NO					

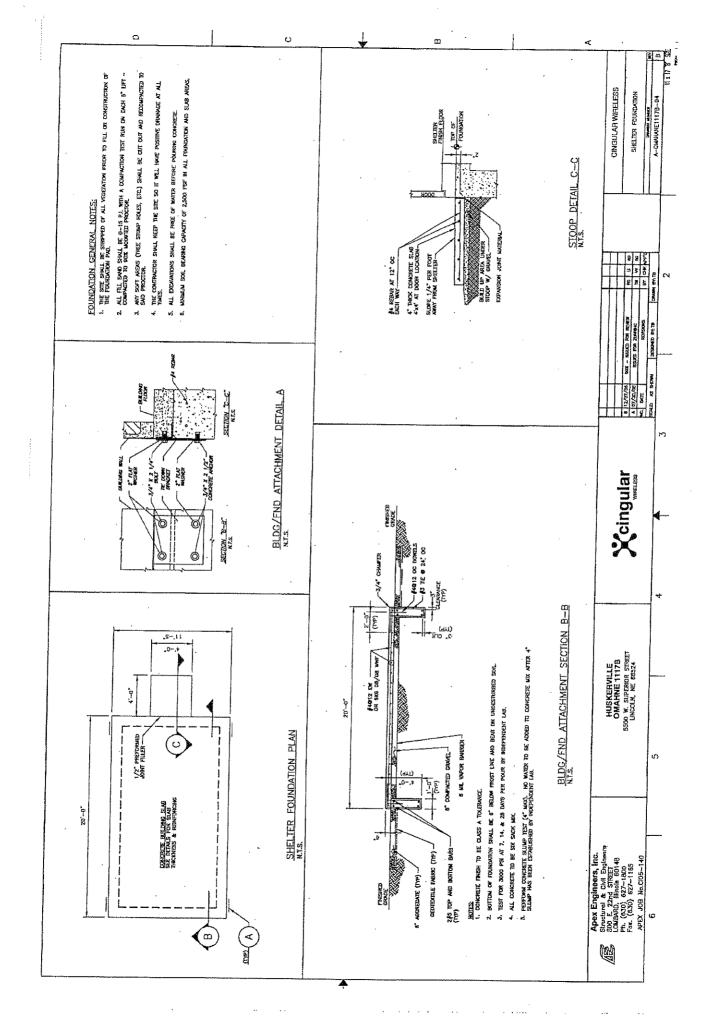
NOTE: THIS EXHIBIT B SHALL BE REPLACED WITH APPROVED PLANS AND SPECIFICATIONS PURSUANT TO SECTION 3 OF THIS AGREEMENT.

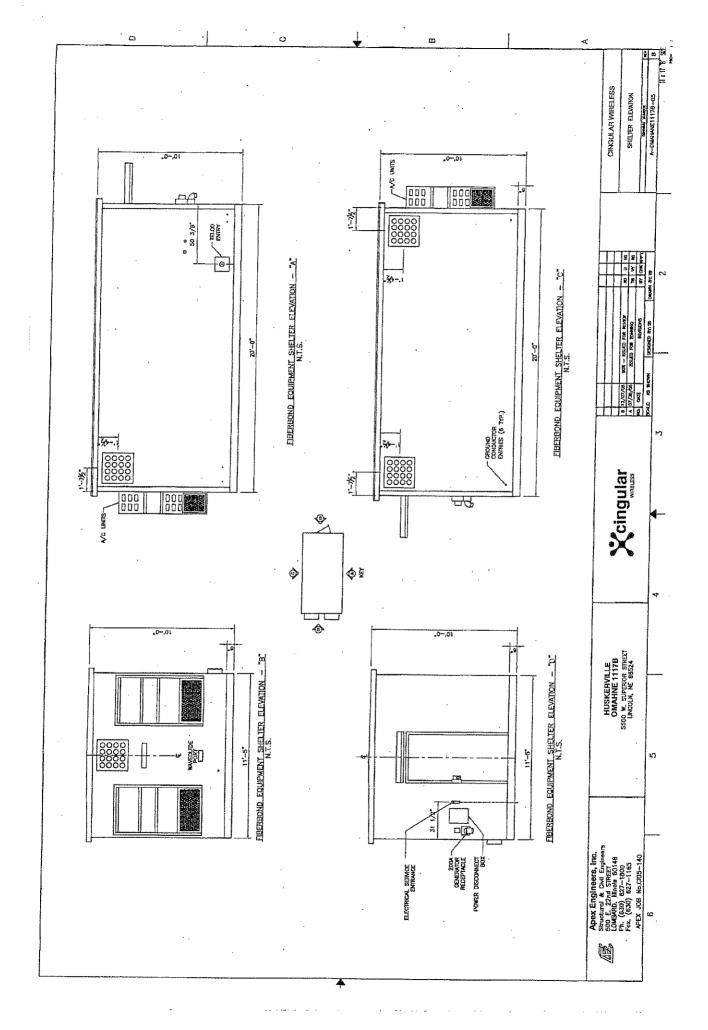
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	cinqular	SITE NUMBER: OMAHNE1117B	SITE NAME: HUSKERVILLE	VICINITY MAP	DIRECTION; FROM GNANIA; NE 1—60 WINTER THOM GUANAT DET 401 (US 34) WEST ON US 34 TO NW 46 STREET, STREAMS AS STREET TO WEST SUPPLIED STREET, RIGHT ON WEST STREAMS AT TO SEN ST. THE STT. IS 5. MILE WEST ON SUPERIOR ST. TO THE WEST OF THE LOSKED GAIL.		and Channed A	(4) (4) (4) (4) (4) (4) (4) (4) (4) (4)	TO MAN TO	SITE QUALIFICATION PARTICIDANTS	EALEST FALES CAM D XXXXXX LORO JERRY EVYOR JERRY	Ni oningonima managan	Cingular 1 1 2007/20 100 1004 1005 1005 1005 1005 1005 1005	-
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PROJECT INFORMATION	SCOPE OF WORK: UNAWNED TELEDAMENTATIONS FACIL SITE AUDRESS: SSOON, SEPPERORS STREET SHOOVE STREET PROPERITY OWNER: GITY DE LANCOLM, WETER DEPARTMENT SSS S. 10th STREET, LANCOLM, NE	PERSON	LONTINGE N 46 51' 33.34' LONGINDE N 95' 46' 23.4' LAY/LONG TYPE NO 83 LEXANDER 190.31' ALS. JANESDETONE GIT OF LINCOM TAX LD. NUMEER XX—02000000X CLUMENT USE NITE TOWN NEW 1852		A-OMAHNETITZB-OT A-OMAHNETITZB-OZ OVERALI, SITE PLAN A-OMAHNETITZB-OS ENLARGED SITE PLAN & ELEVATION A-OMAHNETITZB-OS SHELTER FOLINDATION A-OMAHNETITZB-OS SHELTER FOLINDATION		A-OMARINE 111E-09 CONDITION ON OTES A-OMARHE 1117E-10 SINGLE LINE DIAGRAM & DETAILS A-OMARHE 1117E-10 SINGLE LINE DIAGRAM & DETAILS A-OMARHE 1117E-12 GROUNDING DOTES & PLAN A-OMARHE 1117E-12 GROUNDING DETAILS		- 24.00	NOTES	HANDICAPPED REQUIREMENTS FOULT IS UNAWHED AND HOT FOR HEAVEN HARTAIDN. HANDICAP ACCESS REQUIREMENTS PLUMBING REQUIREMENTS FACILITY HAS NO PLIMBING	Apex Engineers, Inc. Structural & Call Engineers Son F 20th Street	104197 illinois 80148 Ph. (\$30) 877–1800 Fox (\$30) 877–1800 APEX JOB No.CIOS—1441	

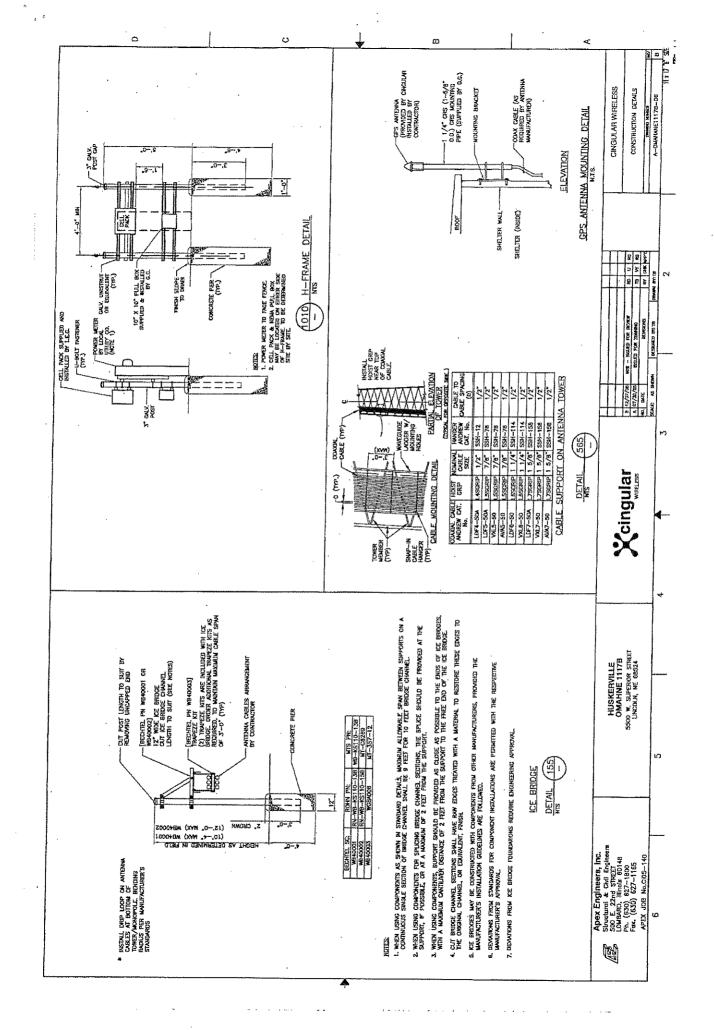
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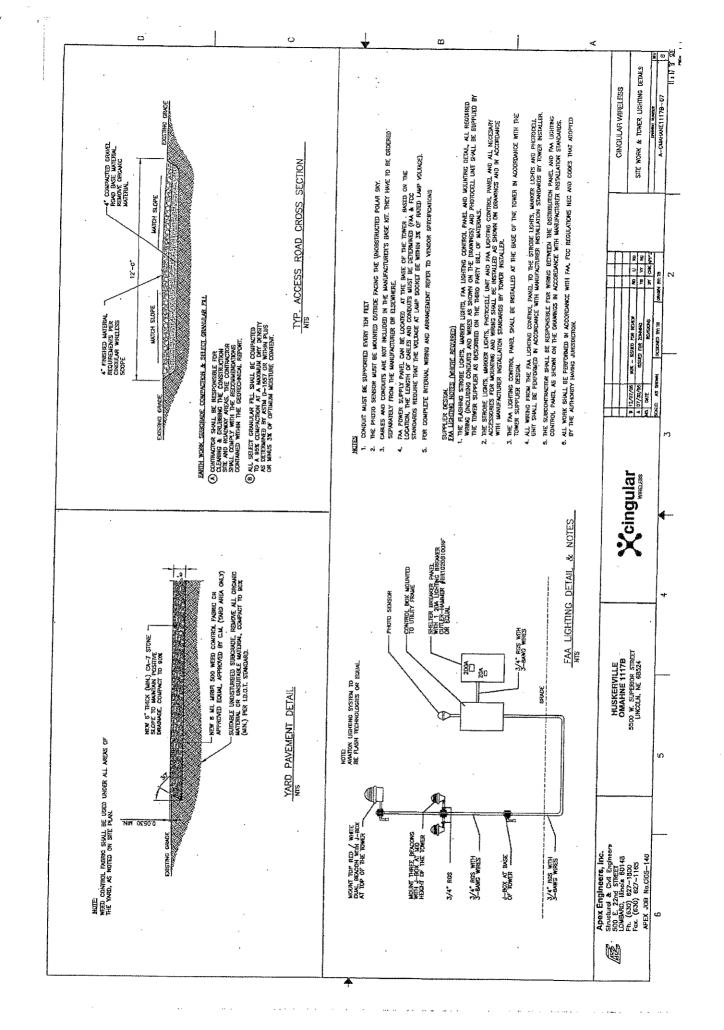


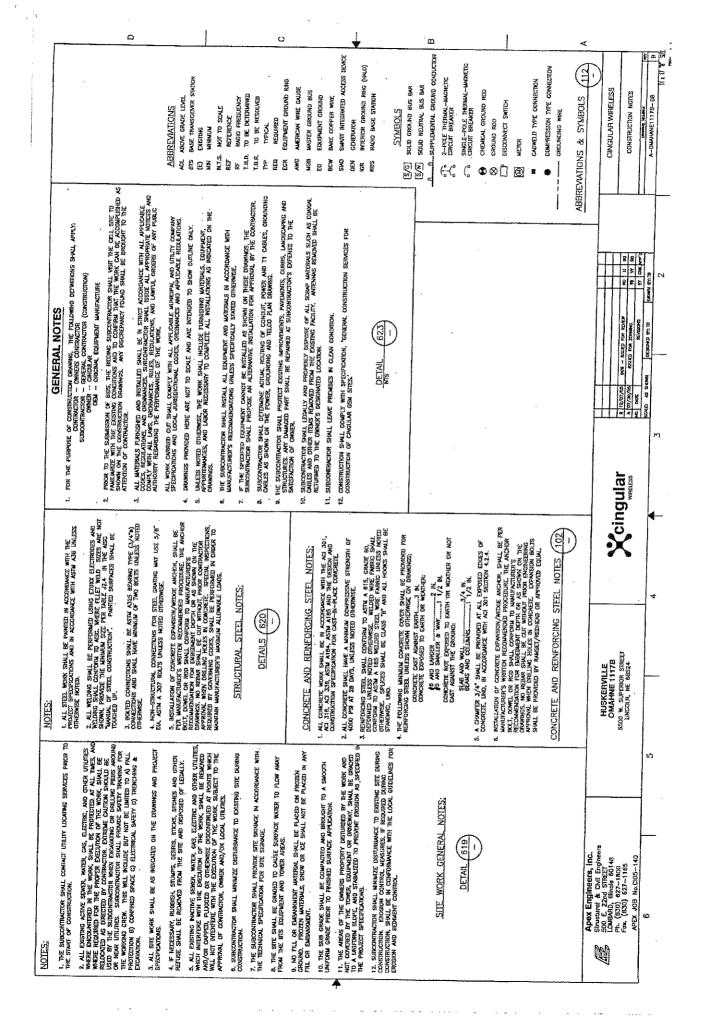


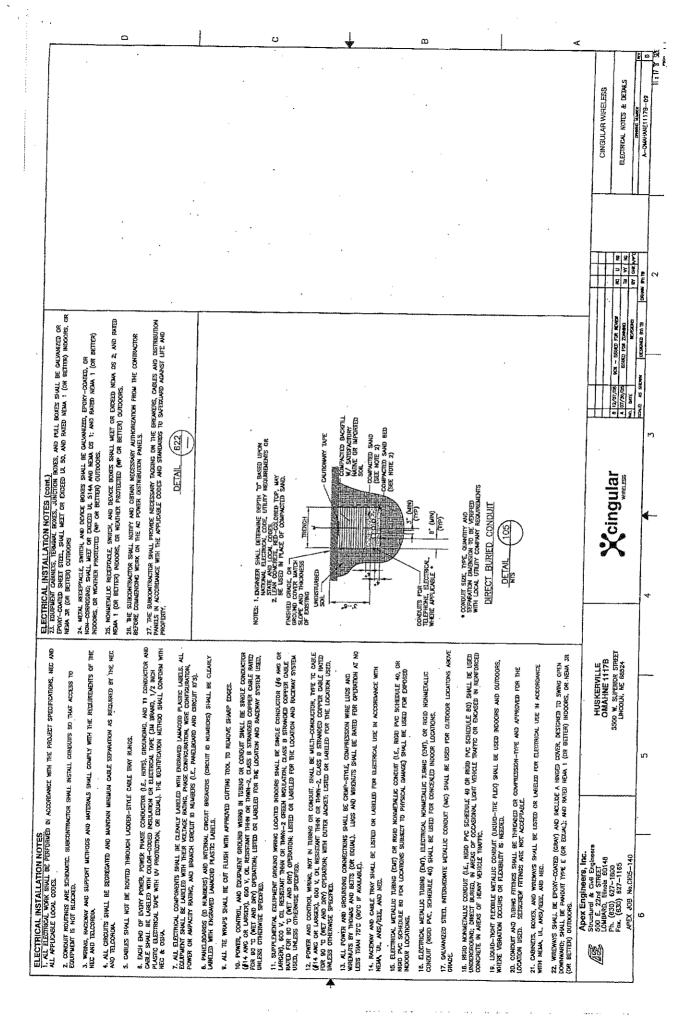


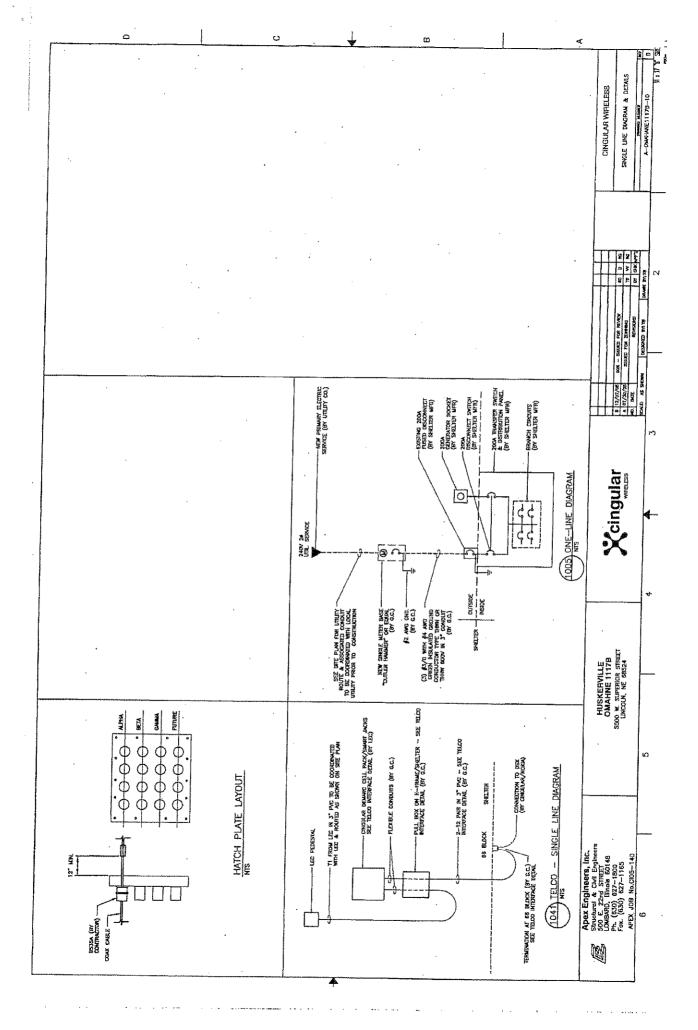


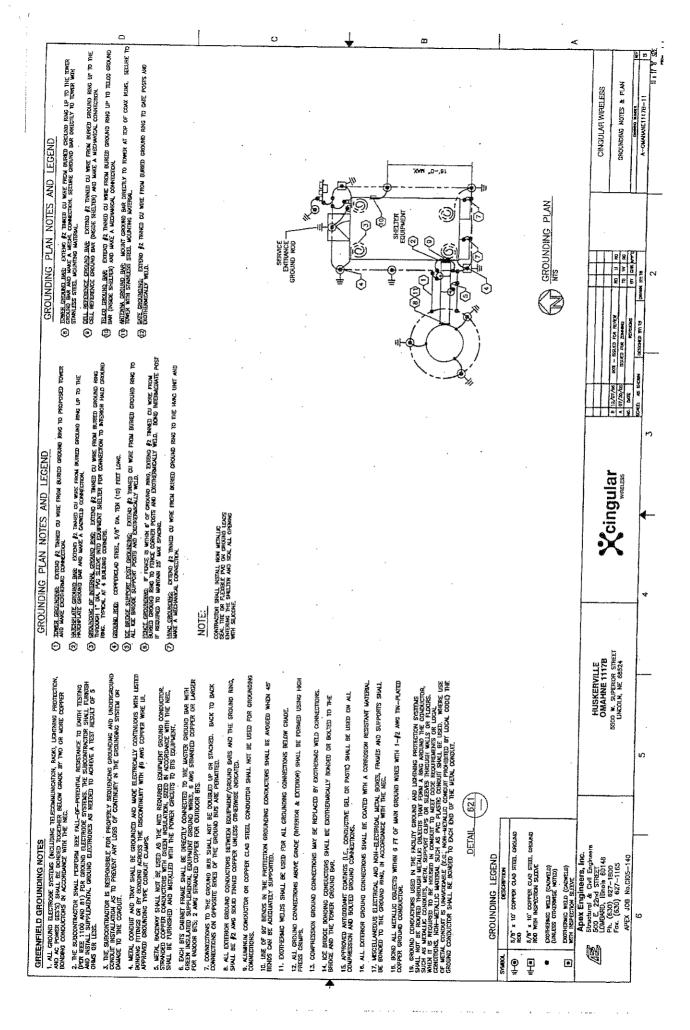


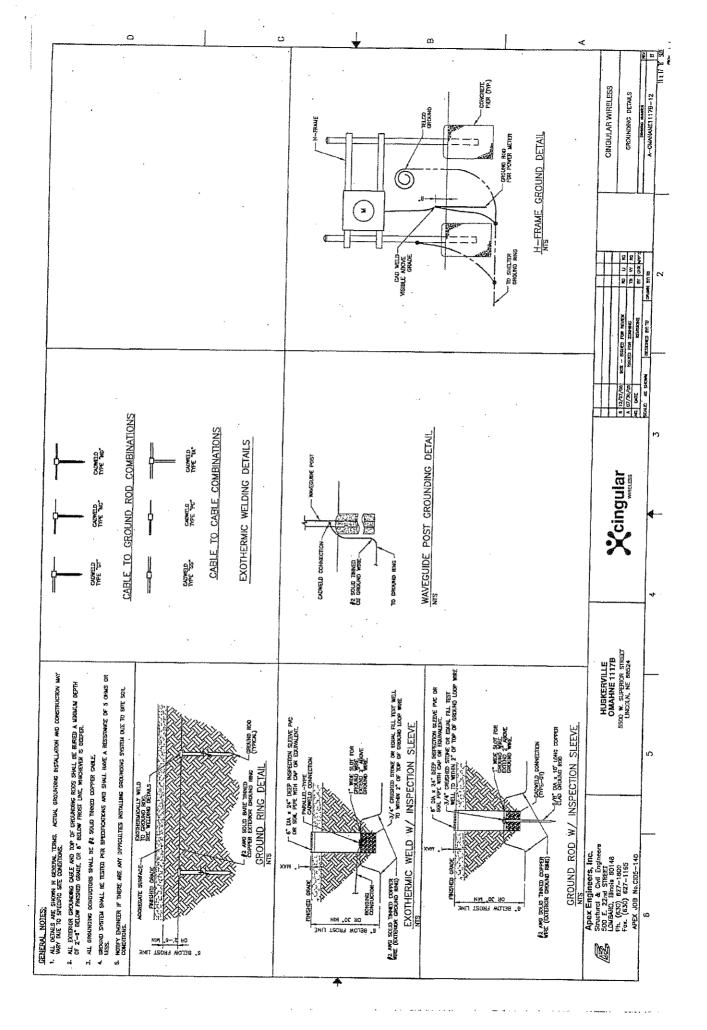


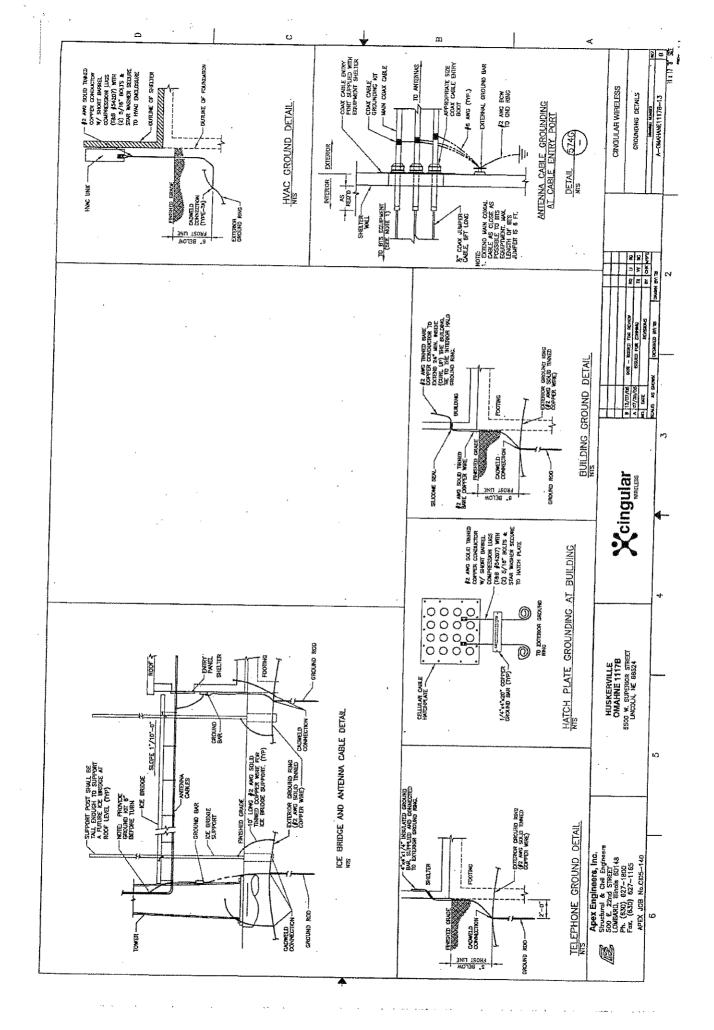


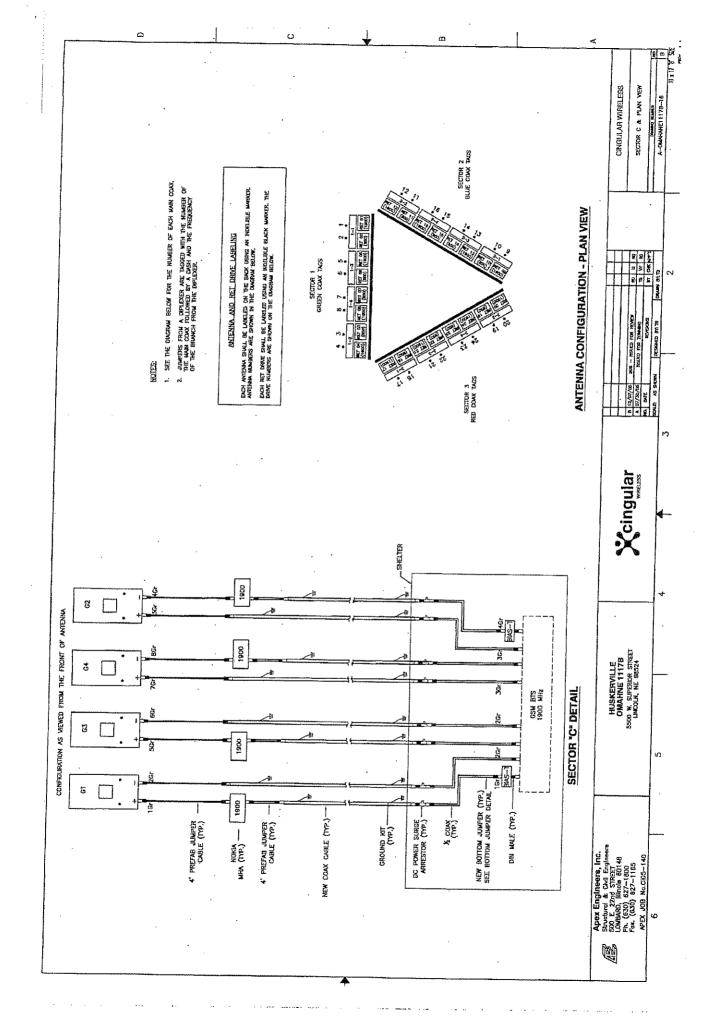


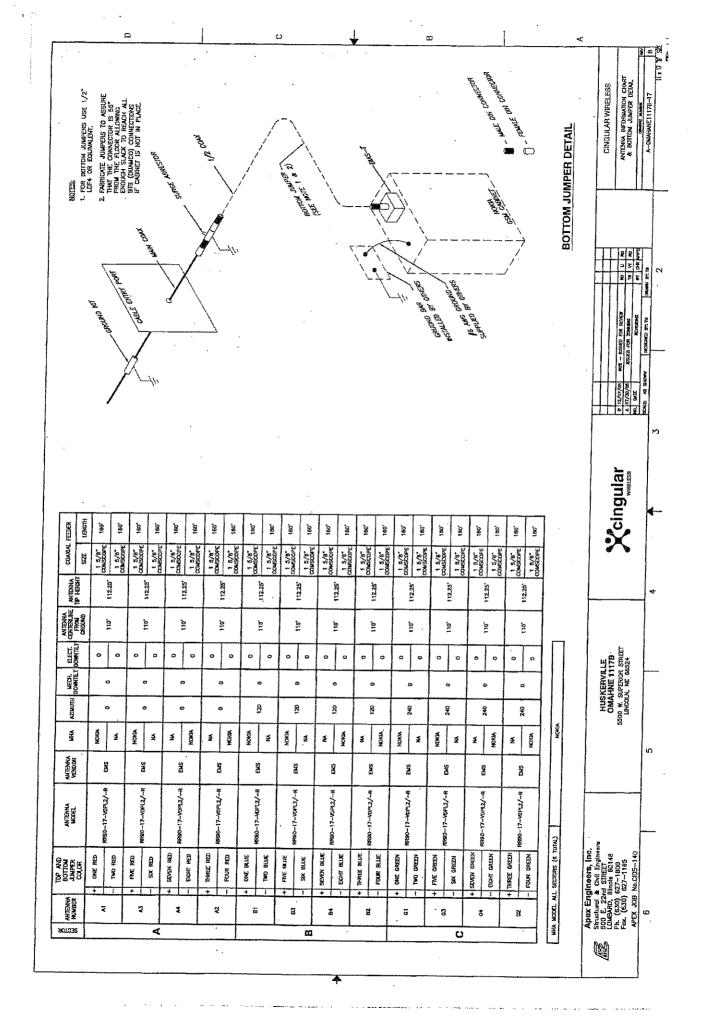


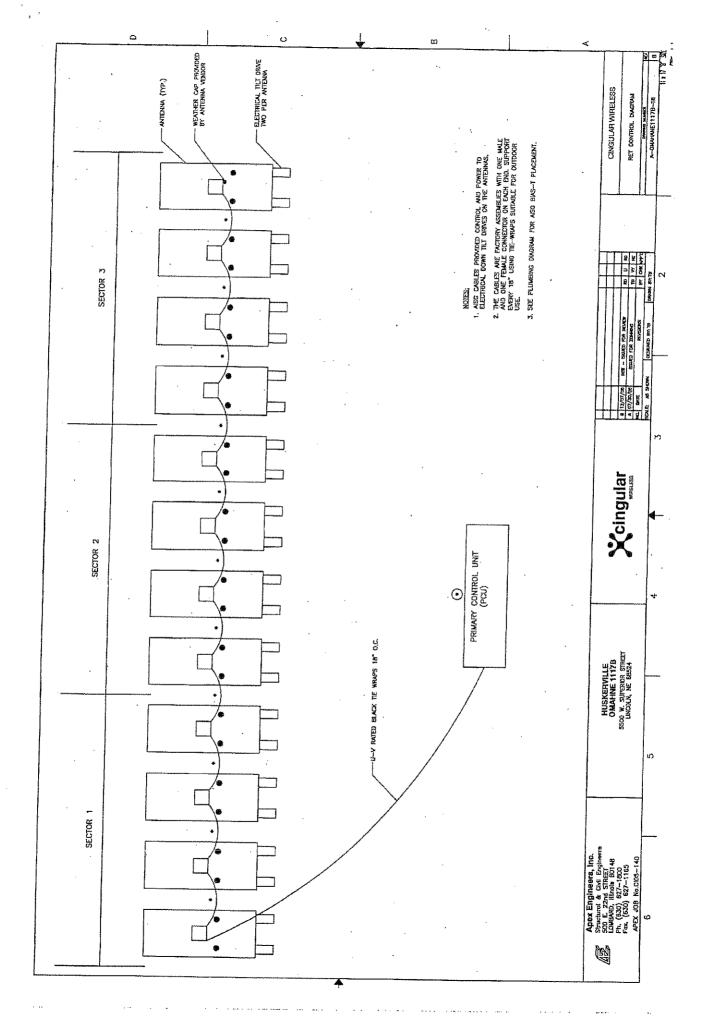


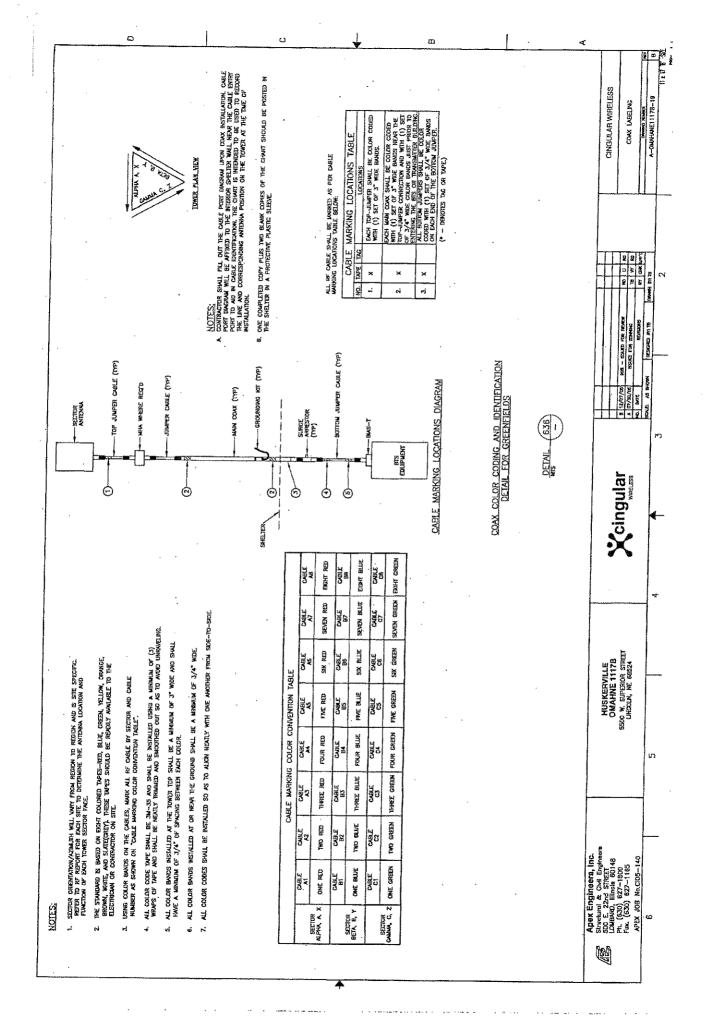












CAUTION: HARMFUL RF ENERGY EXISTS ON THESE LINES CABLE PORT DIAGRAM

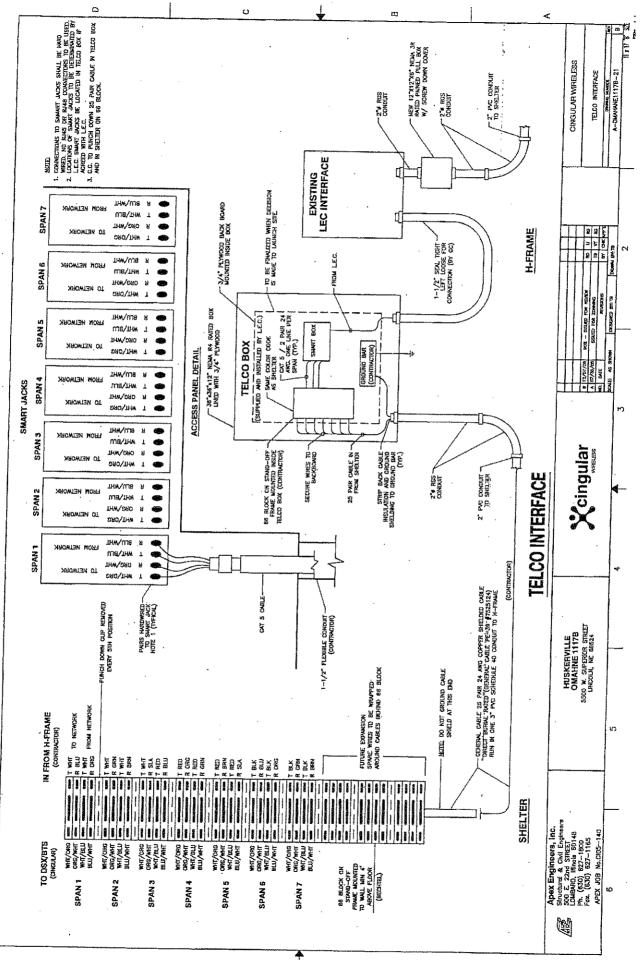
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CINGULAR WIRELESS
CABLE PORT DAGRAM

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HUSKERVILLE OMAHNE 1117B 5500 W. SUPERIOR STREET UNCOLN, NE 88524

Apex Engineers, inc. Structure & CMI Engineer 500 E. Zand STREET (COURAR). Illinois 60148 Ph. (630) 827-1800 Fox. (630) 827-180 APEX 408 No.C05-140



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* DENOTES CONTRACTOR PUNCH DOWN RESPONSIBILITY,

S. THAT CHATRACTOR HAS MADE THIS INSERT ANY QUESTIONS CONTACT A CONTRACTOR REP.

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ALARM TERMINATION DIAGRAM

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1	Mass 500 E. 22nd STREET COMBARD, Innole 80148 Ph. (830) 527-1800	Fax. (630) 627-1165 APEX JOB NA COST-140	9

EXHIBIT C

Memorandum of Agreement

CLERK: Please return this document to: c/o Cingular Wireless LLC 6100 Atlantic Boulevard Norcross, Georgia 30071

Attn: Network Real Estate Administration

Re: Cell Site #: OMAHANE1117-A; Cell Site Name: (Recorder's Use Above this Line)

STATE OF NEBRASKA

COUNTY OF LANCASTER

MEMORANDUM OF AGREEMENT

- 2. The initial term of the Agreement is for (ten) 10 years commencing on _______, 2005, ("Commencement Date"), and ending on the tenth (10th) anniversary of the Commencement Date, with three (3) additional five (5) year options to renew.
- 3. The Property which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Property being licensed to Licensee (the "Premises") is described in Exhibit B annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LICENSOR:	<u>LICENSEE</u> :
CITY OF LINCOLN, a municipal corporation	New Cingular Wireless, PCS, LLC, a Delaware limited liability company
Ву:	By:
Name:	Name: Mark Holm
Title:	Title: Real Estate and Construction Manager
Date:	Date:

STATE OF NEBRASKA)		*	
COUNTY OF LANCASTER)ss:)			
I, the undersigned, a notary positive certify that Coleen J. Seng, as Mayor whose name is subscribed to the for and acknowledged that, pursuant to be voluntary act for the uses and purpos	r for the City regoing Agr her authority	of Lincoln, kneement, appear, she signed the	nown to me to red before me	be the same person this day in person
Given under my hand and sea	al this o	lay of		, 2006.
			ary Public ssion expires _	
STATE OF)			
COUNTY OF))ss:)			
I, the undersigned, a notary p certify that Mark Holm of New Circompany, known to me to be the s Agreement, appeared before me this authority, she signed the said Agreement corporation, for the uses and purposes	ngular Wire same person s day in pe nent as her	less, PCS, LL whose name rson and ackn free and volun	C, a Delawa is subscribed lowledged that	re limited liability d to the foregoing at, pursuant to her
Given under my hand and seal	this da	ay of		_, 2006.
			ry Public sion expires _	

EXHIBIT A

To the Memorandum of Agreement between City of Lincoln, Nebraska, a municipal corporation, as Licensor, and New Cingular Wireless, PCS, LLC, a Delaware limited liability company as Licensee.

DESCRIPTION OF PROPERTY

EXHIBIT B

To the Memorandum of Agreement between City of Lincoln, Nebraska, a municipal corporation, as Licensor, and New Cingular Wireless, PCS, LLC, a Delaware limited liability company as Licensee.

DESCRIPTION OF PREMISES

EXHIBIT D

LICENSE FEE SCHEDULE

License Year	Licensor's Annual Tower Cost Abatement	Licensee's Annual Rent due to Licensor
Year 1	\$ 23,500.00	\$ 0.00
Year 2	\$ 24,205.00	\$ 0.00
Year 3	\$ 24,931.15	\$ 0.00
Year 4	\$ 25,679.08	\$ 0.00
Year 5	\$ 26,449.45	\$ 26,449.45
Year 6	\$ 27,242.95	\$ 27,242.95
Year 7	\$ 28,060.23	\$ 28,060.23
Year 8	\$ 28,902.04	\$ 28,902.04
Year 9	\$ 29,769.09	\$ 29,769.09
Year 10	\$ 30,662.17	\$ 30,662.17

EXHIBIT E

BILL OF SALE

WHEREAS, New Cingular Wireless, PCS, LLC, a Delaware limited liability company("Seller"), agrees to sell to the City of Lincoln, Nebraska, a municipal corporation, ("Purchaser"), for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, that certain Tower owned and constructed by Seller (the "Tower"), being more particularly described in Attachment A hereto and incorporated herein by reference for all purposes.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, for and in consideration of the above sum, Seller hereby CONVEYS, GRANTS, SELLS, TRANSFERS AND ASSIGNS the Tower unto Purchaser. Seller and Purchaser acknowledge that it is Seller's intent to herein convey to Purchaser, Seller's entire right, title and interest in and to the aforementioned Tower and that despite Seller's good faith efforts to describe such Tower herein in its entirety, there may be errors, omissions or discrepancies in such description. If any errors, omissions of discrepancies in such description are discovered by Purchaser, Seller will execute and deliver any instrument reasonably necessary to remedy or correct such error, omission or discrepancy, and, on condition that Seller does so, such errors, omissions or discrepancies will not constitute a breach by Seller of this Bill of Sale.

SELLER MAKES NO WARRANTIES REGARDING THE TOWER AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF SUCH TOWER FOR THEIR INTENDED USE. SELLER CONVEYS THE TOWER AS-IS WHERE-IS. SELLER WARRANTS THAT IT OWNS THE TOWER AND THAT THE SAME IS CONVEYED TO PURCHASER FREE OF ALL LIENS AND ENCUMBRANCES. FURTHER, THE TOWER WILL NOT BE CONVEYED IN VIOLATION OF ANY RIGHTS OF THIRD PARTIES. Notwithstanding this Disclaimer of Warranties, Seller will endeavor to pass through to Purchaser any existing manufacturers' warranties on the Tower to the extent the same are reasonably transferable.

TO HAVE AND TO HOLD the Tower unto Purchaser, its successors, legal representatives and assigns, forever.

EXECUTED as of this day of	, 2006.
SELLER: New Cingular Wireless, PCS, LLC, a Delaware limited liability company	PURCHASER: City of Lincoln, Nebraska, a municipal corporation,
Ву:	Ву:
Printed Name:	Printed Name:
Title:	Title:

ATTACHMENT "A"

TRANSFERRED ASSETS

110' steel Monopole Tower, not including any of Cingular Wireless' operating equipment and other associated communications equipment.

CLERK: Please return this document to:

c/o Cingular Wireless LLC 6100 Atlantic Boulevard Norcross, Georgia 30071

Attn: Network Real Estate Administration

Re: Cell Site #: OMAHANE1117-A; Cell Site Name: Huskerville (Recorder's Use Above this Line)

STATE OF NEBRASKA

COUNTY OF LANCASTER

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into on this ____ day of ________, 2006, by and between City of Lincoln, Nebraska, a municipal corporation, with an office at City Treasurer, 575 S. 10th, Lincoln, NE, 68508, (hereinafter referred to as "Licensor"), and New Cingular Wireless, PCS, LLC, a Delaware limited liability company with an office at 6100 Atlantic Boulevard, Norcross, Georgia 30071 (hereinafter referred to as "Licensee").

1. Licensor and Licensee entered into an AGREEMENT FOR TOWER SPACE AND APPURTENANCES ("Agreement") on the _____ day of _______, 2006, for the

- 2006, ("Commencement Date"), and ending on the tenth (10th) anniversary of the Commencement Date, with three (3) additional five (5) year options to renew.
- 3. The Property which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Property being licensed to Licensee (the "Premises") is described in Exhibit B annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

<u>LICENSOR</u> :	<u>LICENSEE</u> :
CITY OF LINCOLN, a municipal corporation	New Cingular Wireless, PCS, LLC, a Delaware limited liability company
By:	By: Mark Holm
Name: Coleen J. Seng	Name: Mark Holm
Title: Mayor	Title: Real Estate and Construction Manager
Date:	Date: 9 27-06

STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Coleen J. Seng, as Mayor for the City of Lincoln, known to me to be the same person whose name is subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that, pursuant to her authority, she signed the said Agreement as her free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this _	day of, 2006.	
	Notary Public	
	My commission expires	

STATE OF Minnesota)
COUNTY OF Hennepa)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Mark Holm of New Cingular Wireless, PCS, LLC, a Delaware limited liability company, known to me to be the same person whose name is subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that, pursuant to her authority, she signed the said Agreement as her free and voluntary act on behalf of the named corporation, for the uses and purposes therein stated.

Given under my hand and seal this $\frac{27^{h}}{4}$ day of $\frac{5eptembe}{2}$, 2006.

SERENA WEBER
Notary Public
Minnesote
My Commission Expires January 33 2008

EXHIBIT A

To the Memorandum of Agreement between City of Lincoln, Nebraska, a municipal corporation, as Licensor, and New Cingular Wireless, PCS, LLC, a Delaware limited liability company as Licensee.

DESCRIPTION OF PROPERTY

Part of Lot 29, Irregular Tract, and part of Lot 42 Irregular Tract, in the Northern Quarter of Section 7, Township 9 North, Range 7 East of the Sixth Principal Meridian, Lancaster County, Nebraska, to be more fully described upon survey

EXHIBIT B

To the Memorandum of Agreement between City of Lincoln, Nebraska, a municipal corporation, as Licensor, and New Cingular Wireless, PCS, LLC, a Delaware limited liability company as Licensee.

DESCRIPTION OF PREMISES

To be described and replaced upon survey